

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 969

Introduced by Assembly Member Eng

February 22, 2007

~~An act to amend and repeal Section 4945 of the Business and Professions Code, relating to acupuncture. An act to amend Sections 6452.1, 6487.3, and 18510 of the Revenue and Taxation Code, relating to taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 969, as amended, Eng. ~~Acupuncture: continuing education.~~ *Qualified use tax payment.*

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. Existing law requires retailers, as specified, to register with, and to obtain a seller's permit from, the State Board of Equalization, and requires that board to issue forms for the computation and payment of sales and use taxes collected or owed by those retailers. For taxable years beginning on January 1, 2003, and ending on December 31, 2009, existing law authorizes a person to make an irrevocable election to report qualified use tax, as defined, on that person's income tax form. Existing law requires the Franchise Tax Board to include space on income tax returns to allow a person to report and remit qualified use taxes to the Franchise Tax Board, and requires the Franchise Tax Board to remit the qualified use taxes collected to the State Board of Equalization.

This bill would recast the provisions relating to use tax reporting on an income tax return to instead require every person subject to qualified

use tax, as defined, to report and remit that tax on an acceptable tax return, as specified. This bill would require the Franchise Tax Board to revise the income tax form to enable a person to report and remit qualified use tax. This bill would also make conforming changes to related provisions.

~~Existing law, the Acupuncture Licensure Act, provides for the licensing and regulation of acupuncturists by the Acupuncture Board. Existing law requires a licensed acupuncturist to complete 50 hours of continuing education every 2 years, of which no more than 5 hours may be spent on issues unrelated to clinical matters or the actual provision of health care to patients.~~

~~This bill would delete the restriction that no more than 5 of the mandatory continuing education hours may be spent on issues unrelated to clinical matters or the actual provision of health care to patients.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6452.1 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 6452.1. (a) Notwithstanding Section 6451, every person that
- 4 purchases tangible personal property, the storage, use, or other
- 5 consumption of which is subject to qualified use tax, as defined
- 6 in subdivision ~~(b)~~ (d), that is otherwise required to report and remit
- 7 that tax pursuant to this part *and fails to do so, may elect to shall*
- 8 report and remit qualified use tax on an acceptable tax return.
- 9 ~~(b) (1) A person that reports qualified use tax on an acceptable~~
- 10 ~~tax return is deemed to have made the election authorized by this~~
- 11 ~~section.~~
- 12 ~~(2) (A) In~~
- 13 (b) (1) In the case of a married individual filing a separate
- 14 California personal income tax return, an election may be made
- 15 to report either one-half of the qualified use tax or the entire
- 16 qualified use tax on his or her separate California personal income
- 17 tax return.
- 18 ~~(B)~~
- 19 (2) If an individual elects to report one-half of the qualified use
- 20 tax, that election will not be binding with respect to the remaining

1 one-half of the qualified use tax owed by that individual and that
2 individual's spouse.

3 (c) ~~An election to report qualified use tax on an acceptable tax~~
4 ~~return shall be irrevocable.~~ An acceptable tax return that contains
5 use tax shall be considered a tax return for purposes of this part.

6 (d) For purposes of this section:

7 (1) "Acceptable tax return" means a timely filed original return
8 that is filed pursuant to Article 1 (commencing with Section
9 18501), Article 2 (commencing with Section 18601), Section
10 18633, Section 18633.5 of Chapter 2 (commencing with Section
11 18501) of Part 10.2, or Article 3 (commencing with Section 23771)
12 of Chapter 4 of Part 11.

13 (2) (A) Except as provided in subparagraph (B), "qualified use
14 tax" means the use tax imposed under this part, Section 35 of
15 Article XIII of the California Constitution, the Bradley-Burns
16 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
17 with Section 7200)), or the Transactions and Use Tax Law (Part
18 1.6 (commencing with Section 7251)) that has not been paid to a
19 retailer holding a seller's permit or certificate of registration-use
20 tax.

21 (B) "Qualified use tax" does not include:

22 (i) Use tax that applies to a mobilehome or a commercial coach
23 that is required to be registered annually pursuant to the Health
24 and Safety Code or use tax that applies to a vehicle subject to
25 identification under Division 16.5 (commencing with Section
26 38000) of the Vehicle Code, or to a vehicle that qualifies under
27 the permanent trailer identification plate program pursuant to
28 subdivision (a) of Section 5014.1 of the Vehicle Code.

29 (ii) Use tax imposed on a vehicle, vessel, or aircraft.

30 (iii) Use tax imposed on a lessee of tangible personal property.

31 (e) ~~If a person elects to report qualified use tax on an acceptable~~
32 ~~tax return, that person shall comply with all of the following:~~

33 (1) ~~The qualified use tax shall be reported on and remitted with~~
34 ~~an acceptable tax return.~~

35 (2) ~~The qualified use tax shall be reported on and remitted with~~
36 ~~an acceptable tax return that is required to be filed for the taxable~~
37 ~~year in which the liability for the qualified use tax was incurred.~~

38 (iv) *Use tax imposed on purchases of cigarettes, tobacco*
39 *products, or cigarettes and tobacco products for which the*
40 *purchaser is registered with the board as a cigarette consumer, a*

1 *tobacco products consumer, or a cigarette and tobacco products*
2 *consumer.*

3 (e) *A person that is required to report qualified use tax on an*
4 *acceptable tax return shall report and remit the qualified use tax*
5 *due on purchases on tangible personal property made during the*
6 *preceding taxable year in which the liability for the qualified use*
7 *tax was incurred.*

8 (f) (1) The penalties and interest imposed under this part, the
9 Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5
10 (commencing with Section 7200)), or the Transactions and Use
11 Tax Law (Part 1.6 (commencing with Section 7251)) shall apply
12 to use tax reported as qualified use tax on an acceptable return.

13 (2) Any claims for refunds or credits of any use tax reported as
14 qualified use tax on an acceptable tax return shall be made in
15 accordance with Chapter 7 (commencing with Section 6901) of
16 this part.

17 (3) Qualified use tax shall be considered to be timely reported
18 and remitted for purposes of this part, the Bradley-Burns Uniform
19 Local Sales and Use Tax Law (Part 1.5 (commencing with Section
20 7200)), and the Transactions and Use Tax Law (Part 1.6
21 (commencing with Section 7251)), if the qualified use tax is timely
22 reported on and remitted with an acceptable tax return in
23 accordance with the provisions of this section.

24 (g) ~~Notwithstanding a person's election to remit and to report~~
25 *payment of* qualified use tax on an acceptable tax return, the State
26 Board of Equalization is not precluded from making any
27 determinations for understatements of qualified use tax against
28 that person in accordance with Part 5 (commencing with Section
29 6451).

30 (h) Any payments and credits shown on the return, together
31 with any other credits associated with that person's account, of a
32 person that ~~elects~~ *is required* to report qualified use tax on an
33 acceptable tax return shall be applied in the following order:

34 (1) Taxes imposed under Part 10 (commencing with Section
35 17001) or Part 11 (commencing with Section 23001), including
36 penalties and interest, if any, imposed under Part 10.2 (commencing
37 with Section 18041).

38 (2) Qualified use tax reported on the acceptable tax return in
39 accordance with this section.

1 (i) (1) This section does not apply to a person who is otherwise
2 required to hold a seller’s permit or to register with the State Board
3 of Equalization pursuant to Part 1 (commencing with Section 6001)
4 of this division.

5 (2) This section applies to purchases of tangible personal
6 property made on or after January 1, ~~2003~~ 2007, in taxable years
7 beginning on or after January 1, 2003, and on or before December
8 31, 2009, and as of that date becomes inoperative, unless a later
9 enacted statute extends the operation of this section 2007.

10 ~~(3) Notwithstanding this section becoming inoperative as~~
11 ~~described in paragraph (2), any provisions in this section or Section~~
12 ~~18510 relating to collection activities attributable to qualified use~~
13 ~~taxes reported prior to the inoperative date of this section shall~~
14 ~~continue in the same manner as if this section were still operative.~~

15 *SEC. 2. Section 6487.3 of the Revenue and Taxation Code is*
16 *amended to read:*

17 6487.3. (a) (1) For persons that ~~elect~~ *are required* to report
18 qualified use tax in accordance with Section 6452.1, except in the
19 case of fraud, intent to avoid this part or authorized rules and
20 regulations issued by the board, or the gross understatement of
21 qualified use taxes, every notice of a deficiency determination with
22 respect to the qualified use tax shall be mailed within three years
23 after the last day for which an acceptable tax return is due or filed,
24 whichever occurs later.

25 (2) In the case of a gross understatement of qualified use tax,
26 every notice of a deficiency determination with respect to the
27 qualified use tax shall be mailed within six years after the last day
28 for which an acceptable tax return is due or filed, whichever occurs
29 later.

30 (3) For purposes of this subdivision a “gross understatement of
31 qualified used tax” is a deficiency that is in excess of 25 percent
32 of the amount of qualified use tax reported on a person’s acceptable
33 tax return. In the case of married individuals filing separate
34 California personal income tax returns, the total amount of qualified
35 use tax reported will be considered in determining whether there
36 is a gross understatement of qualified use tax.

37 (4) For purposes of this section “acceptable tax return” means
38 a timely filed original return that is filed pursuant to Article 1
39 (commencing with Section 18501), Article 2 (commencing with
40 Section 18601), Section 18633, Section 18633.5 of Chapter 2

1 (commencing with Section 18501) of Part 10.2, or Article 3
 2 (commencing with Section 23771) of Chapter 4 of Part 11.

3 (b) This section applies to reporting of purchases of tangible
 4 personal property made on or after January 1, ~~2003~~ 2007, in taxable
 5 years beginning on or after January 1, ~~2003~~, and ~~on or before~~
 6 ~~December 31, 2009~~, and as of that latter date becomes inoperative,
 7 unless a later enacted statute extends the operation of this section
 8 2007.

9 *SEC. 3. Section 18510 of the Revenue and Taxation Code is*
 10 *amended to read:*

11 18510. (a) (1) The Franchise Tax Board shall revise the returns
 12 required to be filed pursuant to this article, Article 2 (commencing
 13 with Section 18601), Section 18633, Section 18633.5, and Article
 14 3 (commencing with Section 23771) of Chapter 4 of Part 11 in a
 15 form and manner approved by the State Board of Equalization, to
 16 ~~allow~~ enable a person to report and pay qualified use tax in
 17 accordance with the provisions of Section 6452.1.

18 (2) Within 10 working days of receiving from the Franchise
 19 Tax Board the returns described in paragraph (1), the State Board
 20 of Equalization shall do either of the following:

21 (A) Approve the form and manner of the returns and notify the
 22 Franchise Tax Board of this approval.

23 (B) Submit comments to the Franchise Tax Board regarding
 24 changes to the returns that shall be incorporated before the State
 25 Board of Equalization approves the form and manner of the returns.

26 (b) Any payments and credits shown on the return, together
 27 with any other credits associated with that person's account, of a
 28 person that ~~elects to report~~ reports qualified use tax on an
 29 acceptable tax return shall be applied in the following order:

30 (1) Taxes imposed under Part 10 (commencing with Section
 31 17001) or Part 11 (commencing with Section 23001), including
 32 penalties and interest, if any, imposed under this part.

33 (2) Qualified use tax as reported on the acceptable tax return,
 34 in accordance with Section 6452.1.

35 (c) The Franchise Tax Board shall transfer the qualified use tax
 36 received pursuant to Section 6452.1, and any information the State
 37 Board of Equalization deems necessary for its administration of
 38 the use tax, to the State Board of Equalization within 60 days from
 39 the date the use tax is received or the acceptable tax return is
 40 processed, whichever is later.

1 (d) This section shall be operative for returns filed for taxable
2 years on and after January 1, 2003, and ending on or before
3 December 31, 2009, and as of that date becomes inoperative, unless
4 a later enacted statute extends the operation of this section 2007.

5 SECTION 1. Section 4945 of the Business and Professions
6 Code, as amended by Section 15 of Chapter 983 of the Statutes of
7 1991, is repealed.

8 SEC. 2. Section 4945 of the Business and Professions Code,
9 as amended by Section 1 of Chapter 648 of the Statutes of 2005,
10 is amended to read:

11 4945. (a) The board shall establish standards for continuing
12 education for acupuncturists.

13 (b) The board shall require each acupuncturist to complete 50
14 hours of continuing education every two years as a condition for
15 renewal of his or her license. A provider of continuing education
16 shall apply to the board for approval to offer continuing education
17 courses for credit toward this requirement on a form developed by
18 the board, shall pay a fee covering the cost of approval and for the
19 monitoring of the provider by the board and shall set forth the
20 following information on the application:

21 (1) Course content.

22 (2) Test criteria.

23 (3) Hours of continuing education credit requested for the
24 course.

25 (4) Experience and training of instructors.

26 (5) Other information as required by the board.

27 (6) That interpreters or bilingual instruction will be made
28 available, when necessary.

29 (e) Licensees residing out of state or out of the country shall
30 comply with the continuing education requirements.

31 (d) Providers of continuing education shall be monitored by the
32 board as determined by the board.

33 (e) If the board determines that any acupuncturist has not
34 obtained the required number of hours of continuing education, it
35 may renew the acupuncturist's license and require that the deficient
36 hours of continuing education be made up during the following
37 renewal period in addition to the current continuing education
38 required for that period. If any acupuncturist fails to make up the
39 deficient hours and complete the current requirement of hours of
40 continuing education during the subsequent renewal period, then

- 1 ~~his or her license to practice acupuncture shall not be renewed~~
- 2 ~~until all the required hours are completed and documented to the~~
- 3 ~~board.~~

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